

APPLICANT:
Julia K. Monninger

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

**REQUEST: Special exception to allow
a kennel in the Agricultural District**

HEARING DATE: November 20, 2006

Case No. 5569

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Julia K. Monninger

LOCATION: 321 Wheeler School Road, Pylesville, Maryland 21132
Tax Map: 10 / Grid: 1C / Parcel: 222
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: Special exception, pursuant to Section 267-53H(3) of the Harford County Code, to allow a kennel in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Julia K. Monninger, Applicant, is the owner of that 10.11 acre parcel of agriculturally zoned property located at 321 Wheeler School Road, Pylesville, Maryland, which is the subject of this application.

According to the Staff Report, the property is generally rectangular in size, and is bordered by Wheeler School Road on two sides. The topography of the property is typical for the area, containing open pasture land and wooded areas.

The subject property is improved by a rancher and an above-ground pool. To the rear of the dwelling is located a mobile home which has been converted to a kennel for the Applicant's dogs. A fenced dog run area is located next to the converted mobile home. Other improvements to the property include a barn and outbuildings.

Ms. Monninger testified that she raises show dogs. Most of her animals are up to 10 pounds in size. The Applicant purchased the subject property in the year 2000. She originally planned to maintain her ponies and dogs on the property. At the present time she has only dogs.

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The mobile home which has been converted to a kennel is located about 230 feet to the property line adjoining the closest neighbor, according to Ms. Monninger. This is confirmed by the Staff Report which indicates that the kennel is about 230 feet from the western property line, 632 feet from the eastern property line, 220 feet from Wheeler School Road, and 345 feet from the rear property line. Ms. Monninger stated that Mr. Bishop was her nearest neighbor, with Mr. Dalton's property located about 300 feet away.

While Ms. Monninger works for a pet groomer, she does not groom animals other than those she owns at her property. She maintains animals only for her own use as show animals. She keeps approximately one litter a year. The dogs, being small breeds, produce litters of only one, two or three dogs each.

As of the date of the hearing, 26 dogs were located on the property, of which 15 were adult animals. Ms. Monninger described the dogs on her property as follows:

- Six Chinese Crested - under 10 pounds in size;
- Five Chihuahuas - under 5 pounds in size;
- One Pekingese - 8 pounds in size;
- Six Standard Poodles - up to 40 pounds in size;
- Four Maltese - 5 pounds in size; and
- Three Poodles - up to 3 pounds in size.

Ms. Monninger was not able to explain the discrepancy between the number of dogs described (25), and the number she had given in earlier testimony of 26.

The Applicant stated it would be very difficult to relocate the older dogs. People do not like to adopt older animals. The dogs are transported by her in crates. Ms. Monninger identified various photographs of the interior of the kennel. No one comes to the house to see the dogs. She makes no money showing the dogs. Her business is not for-profit. It is only for her enjoyment.

Under cross-examination by Cornelius Helfrich, an affected next-door neighbor, Ms. Monninger confirmed that she was asking permission for 20 dogs only, even though she has up to 26 dogs on the property at present. She again indicated that older dogs are harder to place. She defines older dogs as over 8 years of age. She has 6 older dogs.

None of her dogs are licensed; none have tags. Ms. Monninger realizes that the dogs are required to be licensed. Four of her dogs are male, of which 2 are breeding males.

The Applicant indicated that she seldom sells dogs. She recalls selling 2 poodles about 2 years ago. The expenses of breeding, raising and maintaining the animals greatly exceeds any income she receives from the sale of dogs. She has no interest in breeding animals for profit.

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Next for the Applicant testified Carolyn Lanasa. Ms. Lanasa is familiar with the Applicant and the subject property. She said the Applicant runs a very clean operation, one which is extremely orderly. Ms. Lanasa herself is a dog breeder and has been in the business for 30 years. It is normal to have more females than male dogs. Females are easier to raise and maintain.

Ms. Monninger maintains a good, well kept operation. She does not make money in the show dog business. It is an act of love. Ms. Monninger is a responsible and careful manager of her animals.

Next for the Applicant testified Lora Lee Sibet, who also has show dogs and at one time operated a pet boutique. She presently has 4 dogs. Ms. Sibet has known Ms. Monninger for many years and is familiar with Ms. Monninger's operation. She stated that Ms. Monninger's pet kennel is extremely clean. The dogs are well kept and well organized. Great care is taken of her dogs. Ms. Monninger has always been very careful with her animals. She has only one litter per year.

Next for the Applicant testified Donna Wright, who is Ms. Monninger's employer. Ms. Wright sees from 35 to 40 dogs per day in her business. However, she believes Ms. Monninger maintains her dogs better than do most of her customers. Ms. Wright has been to Ms. Monninger's house "thousands of times". She operates a very clean and orderly operation. In no way can Ms. Monninger make money breeding and showing dogs. She has been a friend of Ms. Monninger for 27 years. She would describe Ms. Monninger as a dog fancier. She is involved with animals for fun, not profit.

Next for the Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm described the property as being rectangular in shape, with most of it being screened from the road. The improvements are located to the west side of the property. The house itself is set back approximately 200 feet from all lot lines. All applicable setbacks can be met.

Harford County Animal Control has been to the site and found that all dogs and the property are well maintained.

Mr. Grimm does not know the reasons why the Department of Planning and Zoning is recommending a maximum of 15 dogs on-site. Mr. Grimm is not the author of the recommendation of the Department. Department representatives have visited the site and found it to be well organized and maintained.

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Next in opposition testified John Carl of 258 Wheeler School Road. Mr. Carl owns property across Wheeler School Road from the subject property, and is able to see onto the subject property through the trees. Mr. Carl presented a petition signed by 33 individuals of the area who are protesting the use and who are opposed to the special exception. Mr. Carl objects to the request. He believes that Ms. Monninger has been maintaining dogs on the property for 4 to 5 years without proper permits. He does not want a kennel on her property. The neighborhood is a quiet residential area and he and his other neighbors wish to keep it that way. He does not want the traffic noise which a kennel would generate.

Mr. Carl believes Ms. Monninger is misrepresenting the situation to certain of her neighbors. She had told certain individuals she had 12 dogs, whereas she now says she has 26. He also believes Ms. Monninger is operating this kennel for profit, although he can present no evidence to support that allegation.

On cross-examination Mr. Carl indicated that he had been unaware that the dogs were actually still on the property. He occasionally hears barking in the neighborhood but cannot attribute the barking as coming from the Applicant's property. Mr. Carl was on the Applicant's property about five years ago, in the basement of the house. He said the stench was terrible and there were dogs present at that time.

In opposition testified Mark Tolbert who also resides on Wheeler School Road. Mr. Tolbert has lived at his property for about three years. He does not believe that Ms. Monninger can maintain the kennel without making a profit. He admitted he has not in the past heard noise from the animals on the Monninger property.

APPLICABLE LAW:

The Applicants request a special exception pursuant to Section 267-53H(3) as follows:

“(3) Kennels. These uses may be granted in the AG, VR, B1 and B2 Districts, provided that all buildings for shelters of animals and all runways shall be located at least two hundred feet from any lot line.”

“Kennel” is defined as:

“An establishment, not part of an agricultural use, in which six or more domestic animals such as cats, dogs and other pets more than six months old are kept, groomed, bred, boarded or trained in return for remuneration or sale.”

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Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant has, without a permit, been operating a kennel on her agriculturally zoned 10 acre parcel of property located on Wheeler School Road for a number of years. She now has 26 dogs of varying size, although for the most part they are of the smaller dog breed.

It is unclear how this case came to the attention of the Harford County Department of Planning and Zoning. While the application was filed as a result of a zoning enforcement investigation, the neighbors were unanimous in testifying that they were unaware that an operation of this size was being conducted on the property.

Nevertheless, the evidence demonstrates, and it is found, that the dogs are maintained in a good, well maintained environment, with a mobile home having been converted to a kennel. Photographs show that the dogs are in cages within the mobile home, with what appears to be an adequate dog run located outside of the mobile home. The mobile home/kennel is located more than 200 feet from the adjoining property lines and the level of noise generated is so low as to be unnoticeable by the neighbors.

Witnesses who had personal knowledge of the kennel operation were unanimous in their testimony that the operation is well maintained, well run, and exhibits a great deal of care in its operation by Ms. Monninger.

Certainly, the specific requirements of Section 267-53H(3) are met by the Applicant. That section provides as follows:

(3) Kennels. These uses may be granted in the AG. . . District. . .

The property is zoned agricultural.

. . . provided that all buildings for shelters of animals and all runways shall be located at least two hundred feet from any lot line.

The buildings and runways are located at least 200 feet from all lot lines.

Accordingly, the specific requirements of the Development Regulations are met.

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The application must further, however, be judged in light of the more generalized considerations of Section 267-9I, Limitations, Guides and Standards. After an application of those factors, as addressed below, results in a clear finding that Ms. Monninger can adequately meet all such standards:

- (1) *The number of persons living or working in the immediate area.*

The subject property itself is a large parcel, located in a mixed agricultural/residential area. There is no evidence that persons living or working in the immediate area would adversely be effected by the proposed use, or would in turn adversely impact the ability of the Applicant to operate the kennel.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Wheeler School Road primarily serves local residents, according to the Staff Report. Traffic to and from the Applicant's property should be minimal. The kennel will not be a commercial business. There will be no dog grooming on-site, other than of those dogs maintained by Ms. Monninger there is no evidence that traffic should increase perceptively as a result of the use.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The requested use is a special exception which has been found by the Harford County Council to be compatible with uses allowed in this district as a matter of right as long as all specific and generalized conditions are met.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

Obviously, a principal concern of the neighbors is the barking of animals which may cause a disturbance in the neighborhood and become a nuisance. However, the dogs are maintained within the kennel and are only taken out for exercise. The kennel and runs are located 200 feet from adjoining properties in this rural residential area. Of note also is the testimony of the neighbors who have not observed any significant noise coming from the subject property. Accordingly, it is found that the property does not generate odors, dust, gas, smoke, fumes, vibration, glare or noise sufficient to impact surrounding properties. Appropriate conditions will be attached to this decision which should help minimize concerns about noise.

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- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Whiteford/Cardiff Volunteer Fire Departments will provide fire protection and emergency service. The property is served by private well and septic systems. A company of the Applicant's choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The Staff Report suggests that the proposed use is consistent with generally accepted planning principles, and such a finding is adopted herein.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Harford County Master Plan, with appropriate conditions.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such impacts have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

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Accordingly, all general and specific standards are met by the Applicant. No negative impacts are found. However, the application must nevertheless be reviewed in light of the standard of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), which provides as follows:

“ . . . the appropriate standard to be used in determining whether a requested special exception use would have an adverse affect and, therefore, it should be denied is whether there are facts and circumstance that showed that the particular use proposed at the particular location proposed would have any adverse affects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

The proposed use fully complies with all specific and generalized requirements of the Harford County Department Regulations. An analysis of Schultz v. Pritts, in light of the findings made above, leads to the conclusion that the proposal will have no significant adverse impact greater in nature than an impact one would normally associate with a kennel in this particular zoning district. Indeed, no noticeable impacts of any nature have been articulated by any witness.

Nevertheless, the neighbors express concern that the number of dogs may be excessive and that the potential problems exhibited by larger dogs would be greater than the potential problems exhibited by smaller dogs. While hard to quantify, it would certainly seem that the practice of the Applicant in maintaining, for the most part, smaller dogs on her property has no doubt led to an impact much lower than it could have been if 20 to 25 large animals were maintained there.

Further note is made of the fact that the Applicant now has 25 to 26 animals on the property whereas she has asked only for permission to maintain 20. The Applicant must, accordingly, reduce those animals to the requested number. Accordingly, the Applicant will be required, within three months of the date of this decision, to reduce her total animals to no more than 20. Newly born animals can remain on the property for six months only after birth. After that, they will be counted toward the allowable total of 20.

The Department of Planning and Zoning has suggested that there be no more than 15 animals on-site. However, there is simply no evidence to suggest that 15 animals is somehow better than having 20 animals, or that 20 animals has more of an adverse impact than 15 animals. The Department of Planning and Zoning Staff Report contained no explanation for this proposed condition, nor was its recommendation explained at the hearing. Accordingly, it is found that the Applicant shall limit her dogs to 20, as requested by her application. However, the proportion of large to small animals is significant, and it is important that the Applicant continue to maintain a ratio of large and small animals similar to what she testified to at the hearing.

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According to the Applicant, at the time of the hearing, she had 6 dogs over 10 pounds (being standard poodles), with all other dogs being less than 10 pounds. That ratio must be maintained. Therefore, the Applicant will be allowed 20 dogs on-site in total, with no more than 5 dogs being over 10 pounds in size, and with all other dogs being 10 pounds or less in size.

The Applicant shall also, every six months, provide a list of the dogs and their approximate weight to the Harford County Department of Planning and Zoning. The Harford County Department of Planning and Zoning shall be permitted by the Applicant, as a condition of this decision, to be allowed onto the property at any time during normal business hours to inspect the property and the kennel operation.

CONCLUSION:

Accordingly, it is recommended that the requested special exception for a kennel for 20 animals be approved, subject to the following conditions:

1. The number of dogs shall be limited to 20. Newborn animals shall be allowed in addition to the 20 animals. Newborn animals that remain on the property for more than 6 months shall be counted as part of the Applicant's allowed 20 animals.
2. Within 3 months of the date of this decision, the Applicant shall reduce the number of animals on-site to 20.
3. Of the 20 animals, no more than 5 animals shall be more than 10 pounds in size. All other animals shall be 10 pounds or less in size.
4. Every 6 months the Harford County Department of Planning and Zoning shall be provided a list by the Applicant of animals, their breed, weight and date of birth.
5. The Harford County Department of Planning and Zoning and Animal Control shall be allowed to conduct periodic inspections of the kennel and runs, during normal business hours.
6. This special exception is for the Applicant's personal use only, and shall expire at such time as the real property is sold, or control of the kennel is transferred.
7. There shall be no commercial activity of any nature on the property.
8. There shall be no boarding or grooming of dogs or animals not owned by the Applicant.

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9. There shall be no signage of any nature on the property indicating the existence of this special exception.
10. No expansion or change in the facilities or operation of the Applicant shall be made without Board of Appeals approval.

Date: January 8, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 6, 2007.